Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1371 of 2003 (S/S)

Manmohan Singh Pawar
and another …….. Petitioners

Versus

State of Uttaranchal
and others …….. Respondents

Mr. Dinesh Gahatori, learned counsel for the petitioners.
Ms. Seema Sirohi, learned Brief Holder for respondents.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners have sought their promotion from the post of Prachar Sahayak to the vacant post of Junior Clerks in the office of the Saving department.

2) Brief facts of the case, as narrated in the writ petition, are that some 45 posts of Prachar Sahayaks were created in the erstwhile State of Uttar Pradesh in the year 1980 vide Government Order No. B-2-28 12-10-139/79 dated 03.11.1980 Service condition of Prachar Sahayaks (Saving) were circulated vide letter dated 2826 / General dated 24.02.1981 (copy Annexure- 1 to the writ petition). The petitioner No. 1 was appointed as Prachar Sahayak in the pay scale of Rs. 330-495 at Uttarkashi where he is still working on said post in the office of the District Saving Officer. The petitioner No. 2 was initially appointed on 30.10.1986 as Prachar Sahayak in the same pay scale of Rs. 330-495 in the office of the District Saving Officer, Lalitpur, and presently working on said post at Haridwar. Copies of the appointment letters are annexed as Annexure- 2 to the writ petition. The above pay scale was revised to Rs. 825-1200 (copy Annexure- 3 to the writ petition). The Secretary Finance, State of U.P. on 27.07.1992 issued a letter (copy

Annexure- 5 to the writ petition) declaring the posts of Prachar Sahayaks as a dying cadre as such further appointments to the vacant posts of Prachar Sahayaks were stopped. However, for doing the work of Prachar Sahayak, Bachat Pracharaks were appointed on contractual posts at a fixed remuneration of Rs. 2,500/- P.m. Meanwhile, the pay scale of the petitioners had again been revised with effect from 01.01.1996 to Rs. 2750-4400. On 29.10.2003 the Government started regularizing services of the Bachat Pracharaks against the vacant posts of junior Clerks leaving the claim of the Prachar Sahayak, who were regular employees as against the contractual posts of Bachat Pracharaks. This action on the part of the Government jeopardized chances of the promotion of the Prachar Sahayaks and has been challenged through this writ petition. In para 12 of the writ petition it is stated that there are still eight vacant posts of the Junior Clerks lying in the department and the petitioners have sought appointment against the said posts by seeking a mandamus through this writ petition.

3) A counter affidavit has been filed on behalf of the respondent Nos. 1 to 5, in which it has not been denied that the petitioners were appointed as Prachar Sahayaks. It is also admitted that on 27.07.1992 the cadre of Prachar Sahayaks was declared to be a dying cadre. In para 7 of the counter affidavit it has been stated that four of the eight remaining Prachar Sahayaks of dying cadre have already been promoted as Junior Clerks. It is further stated in said paragraph of the counter affidavit that the Prachar Sahayaks who are Class- IV employees have a claim only in respect of 25% vacant posts of junior Clerks and remaining 75% are required to be filled from the direct recruitment. It is further stated in the same paragraph by the respondents that six posts are still lying vacant. In para 8 of the counter affidavit it has been categorically stated*" in future they will be promoted in the post of Junior Clerk as and when vacancy of the post of Junior Clerk exists."*

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit, rejoinder affidavit and annexures annexed thereto.

5) Admittedly, the petitioners were appointed as Prachar Sahayaks which is a dying cadre. It is also not disputed that 25% vacant posts are to be filled from amongst the Prachar Sahayaks in the cadre of Junior Clerk. It is also not denied that the petitioners are entitled to promotions but subject to vacancies available. In the circumstances, there remains no controversy as to the promotion claimed by the petitioners to the posts of Junior Clerks for which only two vacancies are required. Though the petitioners have claimed that there are eight vacancies of the Junior Clerks but the respondents have admitted only six of them. During the argument, learned counsel for the petitioners admitted that there are two other Prachar Sahayaks who are senior to the petitioners and waiting for promotion. Definitely, they will have their claim subject to their suitability against the existing posts. In such circumstances, the writ petition deserves to be allowed with the direction that the petitioners shall be promoted as Junior Clerks against the 25% vacant posts subject to their seniority and suitability.

6) Accordingly, the writ petition is disposed of with the direction to the respondents that the petitioners be promoted as Junior Clerks subject to their seniority and suitability against the 25% vacant posts of such cadre of Junior Clerks. No orders as to costs.

(P.C. Pant, J.)

Dt: October 5, 2004
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